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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Rupert Christian Scheiner

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EXAMINER

BAYS, PAMELA M

ART UNIT

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3766

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/516,891	Applicant(s) SCHEINER, RUPERT CHRISTIAN	
	Examiner Pamela M. Bays	Art Unit 3766	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 June 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6,8-10,12,15-17,19,21,22,24-28 and 30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-6,8-10,12,15-17,21,24-28 and 30 is/are allowed.
- 6) ☒ Claim(s) 19 and 22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>13 July 2010</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. This Office Action is responsive to the amendment filed on 2 June 2010. As directed by the amendment: Claims 1-6, 8-10, 12, 15-17, 19, 21, 22, and 24-28 have been amended, Claims 7, 11, 13-14, 18, 20, 23, 29 have been cancelled, and Claim 30 has been added. Thus, Claims 1-6, 8-10, 12, 15-17, 19, 21, 22, 24-28, and 30 are presently pending in this application.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. ***Claims 19 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Liautaud (US Patent No. 4,322,585, previously cited) in view of de Jong (US Patent No. 4,280,256, previously cited).***

4. R Regarding Claim 19, Liautaud discloses a hearing prosthesis (Abstract, an electronic listening system could be medically necessary), the external component comprising at least one processor ("transducer," Col. 2, Lines 30-45) of said medical device disposed adjacent a casing; an engagement housing having disposed therein a plurality of non-spherical engagement members (38, 39) and mounted to the casing (Figs. 3 and 5, housing 32 is mounted to casing by engaging with the pin); and an elongate member adapted to pass through at least a portion of an item of clothing and

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be received in the engagement housing and releasably engage with said engagement members (Abstract, Fig. 5, Col. 2, Lines 45-55); wherein the engagement of said elongate member and said engagement housing is releasable by an unlocking device ("finger release tabs", Col. 2, Lines 59-65), but does not disclose that the engagement housing has a plurality of magnetic non-spherical members disposed in the engagement housing and configured to releasably engage at least a portion of the elongate member, and a magnetic unlocking device configured to apply a magnetic field to the non-spherical engagement member to release the elongate member when the magnetic unlocking device is in proximity to said non-spherical members. De Jong discloses a faster with a head and an elongate member that is intended to pierce an article of clothing (Fig. 1, Col. 1, Lines 1-30), with magnetic members disposed in a circular arrangement (Figs. 2-3) within a non-magnetic chamber (chamber is hollow, therefore inherently non-magnetic), wherein a spring 13 is adapted to urge the plate 14 against the members within the chamber (Fig. 1), and wherein the members frictionally engage the pin member in a chamber (Fig. 1), and wherein the engagement of the pin being releasable by a magnetic unlocking device acting on said plurality of magnetic members and having a magnetic field of a strength sufficient to overcome the bias provided on the members by the spring and so cause the members to move rearwardly relative to the chamber ("removed by a special apparatus which comprises a strong magnet for pulling the balls clear of the pin," Col. 1, Lines 22-30). It would have been obvious to one having ordinary skill in the art at the time of the invention to use any known engagement means such as magnetic members to releasably engage the pin member as taught by

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de Jong, in the hearing device disclosed by Liautaud, in order to securely lock the pin, and unlock it only with a special tool, and because Liautaud discloses that in this device, "many types of retaining clips may be employed" (Col. 2, Lines 50-53), and "mechanical details for the engagement members may vary since these ... are well known" (Col. 2, Lines 60-65). Furthermore, it would have been an obvious matter of design choice to have the members as disclosed by De Jong be made non-spherical, for the purpose of fitting them within the engagement housing, since such a modification would have involved a mere change in the form or shape of a component. A change in form or shape is generally recognized as being within the level of ordinary skill in the art. In re Dailey, 149 USPQ 47 (CCPA 1976). Furthermore, neither De Jong nor Liautaud discloses that the hearing prosthesis comprises an implantable component. However, the Examiner is taking Official Notice that implantable components of hearing devices are well known in the art, and since Liautaud discloses an alternative embodiment with the speakers using partial bone conduction to transmit sounds, it would have been obvious to one having ordinary skill in the art at the time of the invention to include an implantable portion.

5. Regarding Claim 22, Liautaud discloses an external component of a medical device (Abstract, an electronic listening system could be medically necessary), the external component comprising at least one processor of said medical device disposed adjacent a casing ("transducer," Col. 2, Lines 30-45); an elongate member extending outwardly from the casing and adapted to pass through at least a portion of an item of clothing (Fig. 5); and a receiving means adapted to receive at least a portion of the

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elongate member and releasably engage therewith (Fig. 5, Col. 2, Lines 45-60); wherein the engagement of said elongate member and said receiving means is releasable by an unlocking device ("finger release tabs", Col. 2, Lines 59-65), but does not disclose that the engagement housing has a plurality of magnetic members disposed in the engagement housing and configured to releasably engage at least a portion of the elongate member, and a magnetic unlocking device configured to apply a magnetic field to the engagement members to release the elongate member when the magnetic unlocking device is in proximity to said members. De Jong discloses a faster with a head and an elongate member that is intended to pierce an article of clothing (Fig. 1, Col. 1, Lines 1-30), with magnetic members disposed in a circular arrangement (Figs. 2-3) within a non-magnetic chamber (chamber is hollow, therefore inherently non-magnetic), wherein a spring 13 is adapted to urge the plate 14 against the members within the chamber (Fig. 1), and wherein the members frictionally engage the pin member in a chamber (Fig. 1), and wherein the engagement of the pin being releasable by a magnetic unlocking device acting on said plurality of magnetic members and having a magnetic field of a strength sufficient to overcome the bias provided on the members by the spring and so cause the members to move rearwardly relative to the chamber ("removed by a special apparatus which comprises a strong magnet for pulling the balls clear of the pin," Col. 1, Lines 22-30). It would have been obvious to one having ordinary skill in the art at the time of the invention to use any known engagement means such as magnetic members to releasably engage the pin member as taught by de Jong, in the hearing device disclosed by Liautaud, in order to securely lock the pin,

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and unlock it only with a special tool, and because Liautaud discloses that in this device, "many types of retaining clips may be employed" (Col. 2, Lines 50-53), and "mechanical details for the engagement members may vary since these ... are well known" (Col. 2, Lines 60-65). Furthermore, neither De Jong nor Liautaud discloses that the hearing prosthesis comprises an implantable component. However, , the Examiner is taking Official Notice that implantable components of hearing devices are well known in the art, and since Liautaud discloses an alternative embodiment with the speakers using partial bone conduction to transmit sounds, it would have been obvious to one having ordinary skill in the art at the time of the invention to include an implantable portion.

Allowable Subject Matter

6. Claim 1-6, 8-10, 12, 15-17, 21, 24-28, and 30 are allowed.
7. The Prior Art of Record along with other prior art do not disclose the specific clip structure as claimed in an external component of a cochlear implant. Therefore, Claims 1-6, 8-10, 12, 15-17, 21, 24-28, and 30 are allowable and thus novel over the prior art.

Response to Arguments

8. The previous 35 USC 112 rejections made in the Non-Final Office Action have been withdrawn due to the Applicant's amendments/arguments.
9. Applicant's arguments with respect to Claims 19 and 22 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pamela M. Bays whose telephone number is (571)270-7852. The examiner can normally be reached on Monday-Friday, 10:30am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl H. Layno can be reached on (571)272-4949. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Carl H. Layno/
Supervisory Patent Examiner, Art Unit 3766

/P. B./
Examiner, Art Unit 3766